

SENATE, No. 3617

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED DECEMBER 7, 2017

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Revises and expands laws on trespass and vandalism on agricultural and horticultural lands.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning trespass and vandalism on agricultural or
2 horticultural lands and amending various parts of the statutory
3 law.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 2 of P.L.1983, c.522 (C.2C:18-5) is amended to read
9 as follows:

10 2. It is an offense under **[this act]** P.L.1983, c.522 (C.2C:18-4
11 et seq.) to:

12 a. Knowingly or recklessly operate a motorized vehicle or to
13 ride horseback upon the lands of another without obtaining and in
14 possession of the written permission of the owner, occupant, **[or]** ,
15 lessee, or licensee thereof.

16 b. Knowingly or recklessly damage or injure any tangible
17 property, including, but not limited to, any fence, building,
18 feedstocks, crops, live trees, or any domestic animals, located on
19 the lands of another.

20 (cf: P.L.1983, c.522, s.2)

21
22 2. Section 3 of P.L.1983, c.522 (C.2C:18-6) is amended to read
23 as follows:

24 3. a. An offense pursuant to section 2 of **[this act]** P.L.1983,
25 c.522 (C.2C:18-5) is a crime of the third degree if the actor causes
26 pecuniary loss of **[\$2,000.00]** \$2,000 or more; a crime of the fourth
27 degree if the actor causes pecuniary loss **[in excess]** of **[\$500.00]**
28 more than \$500 but less than **[\$2,000.00]** \$2,000; and a disorderly
29 persons offense if **[he]** the actor causes pecuniary loss of
30 **[\$500.00]** \$500 or less.

31 b. The provisions of N.J.S.2C:43-3 to the contrary
32 notwithstanding, in addition to any other sentence which the court
33 may impose pursuant to subsection c. of this section or any other
34 provision of law, a person convicted of an offense under **[this act]**
35 P.L.1983, c.522 (C.2C:18-4 et seq.) shall be sentenced to make
36 restitution, and to pay a fine of not less than **[\$500.00]** \$500 if the
37 offense is a crime of the third degree; to pay a fine of not less than
38 **[\$200.00]** \$200 if the offense is a crime of the fourth degree; and to
39 pay a fine of not less than **[\$100.00]** \$100 when the conviction is
40 of a disorderly persons offense.

41 c. A person who is convicted of an offense pursuant to section
42 2 of P.L.1983, c.522 (C.2C:18-5), in addition to any other fine,
43 penalty, or restitution which may be imposed by law, is liable to the
44 owner, occupant, lessee, or licensee of the lands or of the tangible

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 property for any reasonable and necessary expenses, including
2 reasonable attorney fees, incurred by the owner, occupant, lessee, or
3 licensee to ensure that the lands or the tangible property are restored
4 to their condition prior to commission of the offense. In the
5 sentencing proceedings concerning the offense, the owner,
6 occupant, lessee, or licensee may submit evidence of expenses
7 incurred and damages sustained. The court shall make a finding of
8 the amount of expenses incurred and damages sustained. If the
9 record does not contain sufficient evidence to support such a
10 finding, the court may conduct a hearing upon the issue. The court
11 shall order the person convicted of the offense to make restitution to
12 the owner, occupant, lessee, or licensee in the amount of the
13 expenses and damages found by the court. The court shall file a
14 copy of the order with the clerk of the Superior Court who shall
15 enter upon the record of docketed judgments the name of the
16 convicted person as judgment debtor, and the name of the owner,
17 occupant, lessee, or licensee as judgment creditor. The clerk shall
18 also file a statement that the restitution is ordered pursuant to this
19 subsection, the amount of the restitution, and the date of the order.
20 This entry shall have the same force as a judgment docketed in the
21 Superior Court.

22 (cf: P.L.1983, c.522, s.3)

23
24 3. R.S.4:17-2 is amended to read as follows:

25 4:17-2. a. **【Any】** Except as provided otherwise pursuant to
26 subsection b. of this section, any person who trespasses upon the
27 agricultural or horticultural lands of another is liable to a civil
28 penalty of not less than **【\$100.00**, to be collected in a civil action by
29 a summary proceeding under "the penalty enforcement law"
30 (N.J.S.2A:58-1 et seq.). The Superior Court shall have jurisdiction
31 to enforce "the penalty enforcement law." If the violation is of a
32 continuing nature, each day during which it continues constitutes an
33 additional, separate and distinct offense **】** \$100.

34 b. In addition to any other applicable fines, penalties, or
35 restitution that may be assessed pursuant to section 3 of P.L.1983,
36 c.522 (C.2C:18-6) or any other law, any person who knowingly or
37 recklessly operates a motorized vehicle or rides horseback upon the
38 lands of another without obtaining and in possession of the written
39 permission of the owner, occupant, lessee, or licensee thereof, or
40 damages or injures any tangible property, including, but not limited
41 to, any fence, building, feedstocks, crops, live trees, or any
42 domestic animals, located on the lands of another shall be liable to:

43 (1) a civil penalty of not less than \$1,000; and

44 (2) the owner, occupant, lessee, or licensee of the lands for any
45 reasonable and necessary expenses, including reasonable attorney
46 fees, incurred by the owner, occupant, lessee, or licensee to ensure
47 that the lands are restored to their condition prior to commission of
48 the offense.

1 In the proceedings concerning the offense, the owner, occupant,
2 lessee, or licensee may submit evidence of expenses incurred and
3 damages sustained. The court shall make a finding of the amount of
4 expenses incurred and damages sustained, and if the record does not
5 contain sufficient evidence to support such a finding, the court may
6 conduct a hearing upon the issue. The court shall order the person
7 found liable of the offense to make restitution to the owner,
8 occupant, lessee, or licensee in the amount of the expenses and
9 damages found by the court. The court shall file a copy of the order
10 with the clerk of the court who shall enter upon its record of
11 docketed judgments the name of the liable person as judgment
12 debtor, and of the owner, occupant, lessee, or licensee as judgment
13 creditor, a statement that the restitution is ordered pursuant to this
14 subsection, the amount of the restitution, and the date of the order.
15 This entry shall have the same force as a judgment docketed in the
16 court.

17 c. Any civil penalty imposed pursuant to subsection a. or b. of
18 this section shall be collected in a civil action by a summary
19 proceeding under the "Penalty Enforcement Law of 1999,"
20 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the
21 municipal court shall have jurisdiction to enforce the "Penalty
22 Enforcement Law of 1999." If the violation is of a continuing
23 nature, each day during which it continues shall constitute an
24 additional, separate and distinct offense.

25 d. Nothing in this article shall relieve owners of agricultural or
26 horticultural lands from the obligation to provide conspicuous
27 posting prohibiting trespass on the waters or banks along or around
28 any waters listed for stocking with fish in the current fish code
29 adopted pursuant to section 32 of P.L.1948, c. 448 (C.13:1B-30)
30 before a trespass violation may be found.

31 e. As used in this [act] article, "agricultural or horticultural
32 lands" means lands devoted to the production for sale of plants and
33 animals useful to man, encompassing plowed or tilled fields,
34 standing crops or their residues, cranberry bogs and appurtenant
35 dams, dikes, canals, ditches and pump houses, including
36 impoundments, man-made reservoirs and the adjacent shorelines
37 thereto, orchards, nurseries and lands with a maintained fence for
38 the purpose of restraining domestic livestock. "Agricultural or
39 horticultural lands" shall also include lands in agricultural use, as
40 defined in section 3 of P.L.1983, c.32 (C.4:1C-13) where public
41 notice prohibiting trespass is given by actual communication to the
42 actor, conspicuous posting, or fencing or other enclosure manifestly
43 designed to exclude intruders. [Nothing in this act shall relieve
44 owners of agricultural or horticultural lands from the obligation to
45 provide conspicuous posting prohibiting trespass on the waters or
46 banks along or around any waters listed for stocking with fish in the
47 current fish code adopted pursuant to section 32 of P.L.1948, c. 448

1 (C.13:1B-30) before a trespass violation may be found.】

2 (cf: P.L.1991, c.91, s.172)

3
4 4. R.S.4:17-3 is amended to read as follows:

5 4:17-3. A person who shall violate any of the provisions of this
6 article may be arrested without warrant by the owner, occupant,
7 lessee, or licensee, or an officer of the law and taken for trial before
8 【a court mentioned in section 4:17-2 of this Title】 the appropriate
9 court pursuant to R.S.4:17-2.

10 (cf: P.L.1953, c.5, s.42)

11
12 5. R.S.4:17-4 is amended to read as follows:

13 4:17-4. In a prosecution for violation of the provisions of this
14 article, the failure of the defendant to produce a written permit to
15 enter upon the lands upon which 【he】 the defendant is charged with
16 trespassing, signed by the owner, occupant, lessee, or licensee
17 thereof, shall be prima facie proof that 【he】 the defendant was
18 forbidden 【so to trespass by such】 by the owner, occupant, lessee,
19 or licensee to enter upon the lands of the owner, occupant, lessee, or
20 licensee.

21 (cf: R.S.4:17-4)

22
23 6. R.S.4:17-5 is amended to read as follows:

24 4:17-5. Upon the failure of a person convicted of violating the
25 provisions of this article to pay a fine as imposed 【as provided in】
26 pursuant to this article, the court 【before whom the conviction is
27 had】 convicting the person may commit such person to the county
28 jail until the fine is paid.

29 (cf: P.L.1953, c.5, s.43)

30
31 7. This act shall take effect immediately.

32
33
34 STATEMENT

35
36 This bill would revise, expand, and clarify the restitution and
37 penalty provisions established in law for trespassers and vandals on
38 agricultural or horticultural lands.

39 Current law provides that it is a criminal offense to:

40 (1) knowingly or recklessly operate a motorized vehicle or ride
41 horseback upon the lands of another without obtaining and in
42 possession of the written permission of the owner, occupant, or
43 lessee thereof; or

44 (2) knowingly or recklessly damage or injure any tangible
45 property, including, but not limited to, any fence, building,
46 feedstocks, crops, live trees, or any domestic animals, located on
47 the lands of another.

1 The degree of the offenses described above ranges under current
2 law from a disorderly persons offense to fourth degree crime to
3 third degree crime, depending upon the pecuniary loss involved. A
4 person convicted of one of these offenses is required to make
5 restitution and pay certain minimum mandatory fines in addition to
6 any other penalties that may be assessed for the particular degree of
7 the offense.

8 Current law also provides that a trespasser on agricultural or
9 horticultural lands is subject to a civil fine of at least \$100.

10 This bill would provide that any person who is convicted of one
11 of the criminal offenses listed above would be liable to the owner,
12 occupant, lessee, or licensee (the bill adds licensee to the list of
13 possible victims under the current law) of the lands or of the
14 tangible property for, in addition to any other fine, penalty, or
15 restitution which may be imposed by law, any reasonable and
16 necessary expenses, including reasonable attorney fees, incurred by
17 the owner, occupant, lessee, or licensee to ensure that the lands or
18 the tangible property are restored to their condition prior to
19 commission of the offense. Under the bill, the court would order
20 the person convicted of the offense to make restitution to the owner,
21 occupant, lessee, or licensee in the amount of the expenses and
22 damages found by the court. The court would also file a copy of the
23 order with the clerk of the Superior Court who would enter upon the
24 record of docketed judgments the name of the convicted person as
25 judgment debtor, and the name of the owner, occupant, lessee, or
26 licensee as judgment creditor. The clerk would then file a statement
27 that the restitution is ordered pursuant to this bill, the amount of the
28 restitution, and the date of the order. This entry would have the
29 same force as a judgment docketed in the Superior Court.

30 The bill would also establish a civil penalty of at least \$1,000 for
31 persons who (1) knowingly or recklessly operate a motorized
32 vehicle or ride horseback upon the lands of another without
33 obtaining and in possession of the written permission of the owner,
34 occupant, lessee, or licensee thereof, or (2) knowingly or recklessly
35 damage or injure any tangible property, including, but not limited
36 to, any fence, building, feedstocks, crops, live trees, or any
37 domestic animals, located on the lands of another. For these civil
38 offenses, the bill includes the same provisions as described above
39 for the comparable criminal offenses, i.e., that the violator would be
40 liable to the owner, occupant, lessee, or licensee of the lands or of
41 the tangible property for, in addition to any other fine, penalty, or
42 restitution which may be imposed by law, any reasonable and
43 necessary expenses, including reasonable attorney fees, incurred by
44 the owner, occupant, lessee, or licensee to ensure that the lands or
45 the tangible property are restored to their condition prior to
46 commission of the offense. The same court procedures as those
47 described above for the comparable criminal offenses would apply
48 as well to the civil offenses created by this bill.